

HOUSE BILL 3831

By Shaw

AN ACT to amend Tennessee Code Annotated, Section
46-1-312, relative to cemeteries.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 46-1-312, is amended by deleting the language in subsection (a) and by substituting instead the following:

(a)

(1) The Davidson County chancery court, upon the petition of the commissioner, lot owner, descendant or next of kin of a lot owner, may, upon determining that any of the following grounds exist, appoint the commissioner as receiver to take charge of, control and manage a cemetery registered with the commissioner:

(A) The cemetery has not maintained trust funds in the manner required by this chapter;

(B) The cemetery has allowed its registration to lapse, or the registration has been revoked;

(C) The cemetery is impaired or insolvent;

(D) The cemetery has refused to submit its books, records, accounts, or affairs to examination by the commissioner;

(E) There is reasonable cause to believe that there has been embezzlement, misappropriation, or other wrongful misapplication or use of trust funds or fraud affecting the ability of the cemetery to perform its obligation to perform improvement care or deliver merchandise or services;

(F) The cemetery has failed to file any report required by this chapter;

(G) The cemetery cannot or will not be able to meet all of its contractual obligations when they come due;

(H) A deficiency exists in the improvement care trust fund of any cemetery or separate geographical site of a cemetery; or

(I) The cemetery is not being operated in compliance with the terms and conditions of an order of the commissioner then in force and effect.

(2) For the purpose of this section, Davidson County chancery court shall have exclusive jurisdiction over matters brought under this section, and that court is authorized to make all necessary or appropriate orders to carry out the purposes of this part.

(3) Receivership proceedings instituted pursuant to this part shall constitute the sole and exclusive method of liquidating, rehabilitating, or conserving a cemetery, and no court shall entertain a petition for the commencement of the proceedings unless the petition has been filed in the name of the state on the relation of the commissioner.

(4) The commissioner shall commence any such proceeding by application to the court for an order directing the cemetery to show cause why the commissioner should not have the relief prayed for in the application.

(5) On the return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the public may require.

(6) The commissioner may appoint one (1) or more special deputies, who have all the powers and responsibilities of the receiver granted under this section and the commissioner may employ such counsel, clerks and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks and assistants, and all expenses of taking possession of the cemetery and of conducting the proceedings, shall be fixed by the commissioner, with the approval of the Davidson County chancery court, and shall be paid out of the funds or assets of the cemetery. The persons appointed under this subsection (a) shall serve at the pleasure of the commissioner.

(7) The receiver may take such action as the receiver deems necessary or appropriate to reform and revitalize the cemetery. The receiver has all the powers of the owners and directors, whose authority shall be suspended, except as they are redelegated by the receiver. The receiver has full power to direct and manage, to hire and discharge any employees subject to any contractual rights they may have, and to deal with the property and business of the cemetery.

(8) If it appears to the receiver that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the cemetery by any owner, officer, director or other person, the receiver may pursue all appropriate legal remedies on behalf of the cemetery.

(9) If the receiver determines that reorganization, consolidation, conversion, merger or other transformation of the cemetery is appropriate, the receiver shall prepare a plan to effect those changes. Upon application of the receiver for approval of the plan, and after such notice and hearings as the Davidson County chancery court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any

plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned, taking into consideration the overall operation of the cemetery, and the interests of the lot owners, next of kin of lot owners, and descendants of lot owners and the general public. If the plan is approved, the receiver shall carry out the plan.

SECTION 2. This act shall take effect on July 1, 2010, the public welfare requiring it.